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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CHRIS KOHLER,

Plaintiff,

v.

THE VONS COMPANIES, INC.,

Defendant.

___________________________________/

Case No. 08cv0082 IEG (RBB)

Points and Authorities in Support of Kohler's Motion for Attorneys' Fees, Including Litigation Expenses and Costs

Date: April 28, 2008
Time: 10:30 a.m.
Ctrm: 1, 4th Floor

Honorable Irma E. Gonzalez

[No Oral Argument Unless Requested by the Court]

I. Background

Plaintiff Chris Kohler (hereinafter "Plaintiff" or "Kohler") brought this suit against defendant The Vons Companies, Inc. dba Vons #2360 (hereinafter "Defendant" or "Vons"), alleging that a number of architectural barriers he encountered at the Vons #2360 located at 845 College Boulevard, Oceanside, California, violated the ADA, 42 U.S.C. § 12101 et seq., and various state laws.

On February 18, 2008, Kohler accepted a Rule 68 Offer by Vons. The Court granted an entry of judgment in favor of Kohler and against Vons on March 6, 2008. To that end, the Court granted both injunctive relief and monetary damages in the amount of $4,001. Kohler now moves for attorneys' fees, including litigation expenses and costs, pursuant to 42 U.S.C. §12205, and California law in the amount of $7,008.50.

II. Discussion

A. Prevailing Party

Under 42 U.S.C. §12205, the "prevailing party" in an ADA action can recover "reasonable attorney's fees, including litigation expenses, and costs…" *Barrios v. California Interscholastic Fed'n*, 277 F.3d 1128, 1134 n.5 (9th Cir. 2002). Likewise, the prevailing plaintiff shall also receive fees and costs under California's disability access laws. *See* California Civil Code §§ 52(a); 54.3(a); 55.

Here, judgment was entered in favor of Kohler. *See Barrios*, 277 F.3d at 1134 (discussing fees under ADA and state law).

The "prevailing party" in an ADA action can recover a "reasonable attorney's fee, including litigation expenses, and costs…" 42 U.S.C. §12205. Here, it is undisputed that Kohler is the prevailing party under the ADA. He not only obtained injunctive relief, but monetary damages as well. Likewise, this is also sufficient evidence to satisfy the prevailing party requirements of California's disability access laws. *See* Ca. Civil Code §§ 52(a), 54.3(a), and 55. Thus, Kohler is the prevailing party.

B. Reasonable Hourly Rate

Once the prevailing party is identified, the Ninth Circuit has adopted the "lodestar" method to for calculating that party's attorney's fees. To determine the appropriate fee amount, the court multiplies a reasonable hourly rate by the number of hours reasonably expended in the litigation. *Widris v. Apfel*, 140 F.3d 1207, 1209 (9th Cir. 1998)(citing *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)). There is a strong presumption that the lodestar amount is reasonable. *Harris v. Marhoefer*, 24 F.3d 16, 18 (9th Cir. 1994).

In order to determine the reasonableness of hourly rates claimed, the court looks to the "prevailing market rates in the relevant community," *Blum v. Stenson*, 465 U.S. 886, 895 (1984), for "similar work performed by attorneys of comparable skill, experience, and reputation." *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1210 (9th Cir. 1986).

Should the Court agree that attorney's fees are warranted, Kohler would request fees in the amount of $350 per hour for lead counsel, Lynn Hubbard, III; $225 per hour for associate counsel, Scottlynn J Hubbard, IV and Mark Emmett; and $90 per hour for paralegals, all of which are acceptable hourly rates awarded to prevailing plaintiffs in similar cases. *See, e.g., Dodson v. Albertson's, Inc.,* Case No. CIV.S-06-1486, 2008 WL 298823 (E.D. Call, Feb. 1, 2008) (Karlton, SJ opinion); *Feezor v. Del Taco, Inc.*, Case No. 04cv0097 (June 23, 2005 S.D. Cal.).

C. Reasonable Number of Hours Expended

As detailed in plaintiff's counsel's declaration, plaintiff seeks to recover attorneys' fees against defendant 23.75 hours expended in this litigation. He succeeded in his claims and received a damage award of $4,001.00. This is an "excellent result" justifying full compensation. *See Hensley*, 461 U.S. at 435 ("Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee.").

D. Litigation Expenses and Costs

The ADA provides for the recovery of out-of-pocket litigation expenses in addition to attorney's fees. 42 U.S.C. §12205; *United States Steelworkers v. Phelps Dodae Corp.*, 896 F.2d 403, 407 (9th Cir. 1990). Plaintiff's counsel is thus entitled to recover litigation costs and expenses incurred in connection with the case (as well as the fees motion).[1] These litigation expenses and costs are identified in greater detail in the Declaration of Lynn Hubbard, III filed concurrently herewith.

III. Summary

Based on the foregoing discussion, plaintiff asks that the court award the following amounts:

Name	Hours	Rate	Total
Lynn Hubbard, III	16.95 hours	$350/hr	$5,932.50
Scottlynn J Hubbard, IV	0.6 hours	$225/hr	$135.00
Paralegals	6.2 hours	$90/hr	$558.00
Litigation Expenses and Costs			$383.00
		GRAND TOTAL	**$7,008.50**

Kohler therefore asks the court to ORDER that plaintiff's motion for attorneys' fees, litigation expenses and costs be GRANTED in the amount of $7,008.50

Dated: March 20, 2008

DISABLED ADVOCACY GROUP, APLC

/s/ Lynn Hubbard, III, Esq.
LYNN HUBBARD, III
Attorney for Plaintiff

[1] This includes reimbursement for time spent on a motion for attorney's fees. *Clark v. City of Los Angeles*, 803 F.2d 987, 992 (9th Cir. 1986).